

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1460 of 1997
in
SPECIAL CIVIL APPLICATION No 1565 of 1997
with
CIVIL APPLICATION NO. 11024 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN
and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 & 2 : YES / 3 to 5 : NO

STATE OF GUJARAT

Versus

SAVITABEN MADHUKAR MAKIWANA

Appearance:

MR PRASHANT G. DESAI, GOVT. PLEADER for Appellants
MR AJ PATEL for Respodents Nos. 1 to 7, 9 to 17, 19,
21 & 23
MR KS JHAVERI for Respondent No. 27, 29

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 28/04/98

C.A.V. JUDGMENT (Per: A.R. Dave, J.)

The appellant-Government has questioned validity of the judgment delivered in Special Civil Application No. 1565 of 1997 dated 25th July 1997 whereby the Learned Single Judge has quashed and set aside order dated 12th February 1997 passed by appellant No. 1 Government under provisions of sec. 263(1) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as 'the Act') whereby Kalol Municipality was superseded by the appellant Government. Parties in the appeal have been described as arrayed in the petition for the sake of convenience.

2. Kalol Municipality, respondent No. 3 in the petition, was superseded by respondent No.1 Government, by an order dated 12th February 1997 and, therefore, the petitioners, some of the Concillors of Kalol Municipality, had challenged the order of supersession. The petitioners had mainly submitted before the Learned Single Judge in Special Civil Application No. 1565/97 that the impugned order of supersession was unjust, illegal and was passed without any application of mind. The said order was also alleged to be violative of principles of natural justice. It was submitted by the petitioners that even if some illegalities were committed, the same were committed by the office bearers of the Municipality and not by the municipal concillors. It was, therefore, submitted that the municipality could not have been superseded under provisions of Sec. 263(1) of the Act.

3. After hearing the concerned Advocates and looking to the facts of the case, the Learned Single Judge was pleased to allow the petition by setting aside order dated 12.2.1997 on the ground that the impugned order superseding the Municipality was violative of principles of natural justice and it suffered from the vice of non application of mind.

4. Being aggrieved by the above-referred to judgment delivered in Special Civil Application No. 1565/97, the State of Gujarat and the Collector, Mehsana, have filed the present appeal. The learned Government Pleader appearing for the said authorities has submitted the facts of the case as under.

5. As respondent Government was of the view that Kalol Municipality was not competent to perform or was deliberately making defaults in performance of its duties imposed under the Act, the respondent Government had issued a show-cause notice dated 7.1.1997 calling upon Kalol Municipality to show cause as to why Kalol

Municipality should not be superseded in the public interest as, because of careless and negligent working of Kalol Municipality, residents of the Municipality were put to difficulties. In the said show-cause notice 14 different grounds were narrated by the respondent Government. It has been stated in the said show-cause notice that Kalol Municipality had to perform its duties as trustee as provided in Sec. 80 of the Act but the Municipality and the office bearers of the Municipality had acted in a manner which was not in the interest of the Municipality. It was also alleged that in the matter of giving a contract for collection of octroi to M/s. Pravin Corporation, the Municipality had done undue favour to the contractor which ultimately resulted into loss to the tune of Rs. 77 lakhs to the Municipality. The said contract was given in contravention of an order passed by the Director of Municipalities. Without getting proper permission from the Director of Municipalities, 190 persons were given employment. The said appointments were beyond the sanctioned strength of the cadre and against the guidelines prescribed by the Finance Department of the respondent Government with regard to economy drive. Moreover, several employees were given promotions though no specific rules with regard to recruitment and promotion were framed by the Municipality. In spite of the fact that the Collector, Mehsana had passed an order suspending recruitment and promotion of certain employees, the Municipality had defied the said order in the matter of giving promotions to its certain employees. The Municipality had not recovered Education Cess and had also incurred various expenditures which were not as per the relevant rules. By incurring expenditure without following proper rules and regulations, the Municipality had abused its powers. The Municipality had not made payment of salary to its employees and pension to its retired employees. It was also alleged in the show-cause notice that without proper scrutiny huge amount was paid to certain contractors in cash and that too without due sanction from the concerned authority. The Municipality had also shown absolute carelessness in the matter of recovery of taxes. Without following any policy or without inviting tenders, a sum of Rs. 12 lakhs was spent for purchase of sodium lights, tube lights, fixtures etc.. Only on account of carelessness in maintenance of cleanliness on the part of the Municipality, several persons had suffered from jaundice. It was also alleged that log books were not being maintained for vehicles of the Municipality and vehicles belonging to the Municipality were misused. In violation of provisions of Sec. 67 of the Act, approximately Rs. 5,25,000/- were spent for the purpose

of levelling of land by using burnt charcoal. For several miscellaneous works, without obtaining relevant bills, approx. Rs. 3,50,000/- or more were spent during 1996-97. In spite of the fact that such a huge amount of public fund was spent in an improper and irregular manner, the Municipality had not taken or initiated any action against the concerned employees. For the period commencing from 1.4.1996 to 9.12.96, the concerned Presidents of the Municipality had sanctioned bills worth Rs. 9 lakhs without doing necessary formalities and without getting the bills routed through the Chief Officer. By doing so, provisions of Sec. 45 of the Act had been violated. From 1.1.1996 to 30.11.1996 more than Rs. 2,43,000/= were given to employees of the Municipality by way of advances. Accounts with regard to the said amount were not rendered to the Accounts Branch and details with regard to advances given earlier were not properly recorded. The employees had spent the amount of advances received by them without maintaining proper bills or giving details about the money spent by them.

6. In pursuance of the said show-cause notice, the Municipality had given its reply dated 10.2.1997. After hearing the concerned representatives of the Municipality on 11.2.1997 and looking to the contents of the reply, the respondent Government had passed an order dated 12.2.1997 whereby the Municipality was ordered to be superseded.

7. The learned Government Pleader has vehemently submitted that the impugned order dated 12.2.97 is just, legal and proper as the said order was passed only after considering the reply given by the respondent Municipality dated 10.2.97 and submissions made at the time of hearing on 11.2.97. He has submitted that by no stretch of imagination it can be said that the impugned order dated 12.2.97 is not a speaking order or it suffers from the vice of non-application of mind. He has submitted that each and every ground incorporated in the show-cause notice was duly discussed and after narrating the grounds on which the Municipality was sought to be superseded, the respondent Government had come to a conclusion that the Municipality should be superseded. Merely because the grounds incorporated in the show-cause notice and the findings arrived at in the impugned order had a similar language, as per submission of the learned Government Pleader, it cannot be said that there was non-application of mind on the part of the authority which had passed the impugned order. He has also

submitted that a quasi-judicial authority is not supposed to give reasons in detail. According to him, there was no violation of principles of natural justice because a copy of letter addressed by advocate Shri Padival was not given to the Municipality. Thus, according to him, the learned Single Judge ought not to have quashed order dated 12.2.1997 which was a just and legal order.

8. On the other hand, Learned Advocates appearing for the original petitioners and for the respondent Municipality have tried to support the order passed by the learned Single Judge by submitting that the impugned order dated 12.2.97 suffers from the vice of non-application of mind as reasons for coming to the conclusion to the effect that the Municipality had failed in performance of its statutory duties have not been incorporated in the impugned order. They have relied upon judgment delivered in the case of Radheshyam Khare and Anr. vs. The State of M.P. and ors. reported in AIR 1959 SC 107. It has been submitted that as per law laid down by the Apex Court in the said judgment, the State Government was duty bound to take the decision under Section 263 (1) of the Act in a judicial manner and it ought to have recorded its reasons for superseding the respondent Municipality. They have also relied on a judgment delivered in the case of Shri S.N. Mukherjee v. Union of India reported in AIR 1990 SC 1984 which makes it obligatory on the part of quasi-judicial authorities to state the reasons for their decision unless the said requirement has been dispensed with expressly or by necessary implication. It has been submitted that in the instant case the respondent Government was acting as a quasi-judicial authority and, therefore, it was obligatory on the part of the respondent Government to record reasons for which the impugned order was passed. They have then submitted that the order passed by the learned Single Judge is just, legal and proper and therefore this Court should not interfere with the said order.

9. We have heard the learned advocates at length and have carefully gone through the impugned order dated 12.2.97 whereby respondent Kalol Municipality has been ordered to be superseded. The said order, in our opinion, cannot be said to be an order which is not a speaking order. The said order incorporates the conclusions arrived at by the authority and the said conclusions were arrived at after considering the reply given by the Municipality. It is true that the language used in the grounds stated in the show-cause notice dated 7.1.97 and the language used in the impugned order dated

12.2.97 is quite similar. We do not see anything abnormal in the said fact. If the ground which has been given in the show-cause notice is ultimately found to be correct after hearing the concerned parties and if the authority passing the impugned order reproduces the ground which was given to the concerned person in the show-cause notice, it cannot be said that there is non-application of mind on the part of the concerned authority. In the instant case, 14 grounds were stated in the show-cause notice. After referring to every ground, the conclusion arrived at by the respondent authority has been stated. As all the grounds were found to be correct after considering the reply and oral submissions, the impugned decision to supersede the Municipality was taken.

10. If we look at the impugned order dated 12.2.97, it is clear that the respondent Government had considered the reply given by the respondent Municipality dated 10.2.97. It has been stated in the said order that day by day condition of the municipality had become worse and the Municipality had failed in performance of its statutory duties and, therefore, the respondent Government had decided to supersede the Municipality. In the schedule attached to the order the details with regard to the irregularities and illegalities committed by the Municipality have been stated in detail. To narrate a few, the first point in the schedule pertains to failure of the Councillors of the Municipality and the Municipality to function properly as trustees as expected under provisions of Sec. 80 of the Act. As a result thereof, the Municipality had suffered loss and the incidents which caused loss to the Municipality have been narrated thereafter.

11. So far as second ground in the schedule is concerned, it is very clear that the Municipality had acted in a manner which would cause loss to the Municipality in the matter of a contract given to M/s. Pravin Corporation with regard to collection of octroi. A sum of Rs. 2,75,05,000/= was to be paid by M/s. Pravin Corporation to the respondent Municipality by 12 advance cheques of equal amount for the first year of the contract. In fact, the contractor had not given the last instalment of the said amount. The contractor had addressed a letter dated 16.8.96 to the Municipality wherein it was requested to return the amount of deposit to the Corporation and ultimately, in pursuance of the said letter, the Board of Kalol Municipality had decided to reduce the amount of contract for the second year. In spite of the earlier contract arrived at between the

Municipality and M/s. Pravin Corporation, the Municipality had changed the terms of the contract so as to accept only Rs. 2,25,00,000 from the contractor instead of Rs. 3,02,55,000/=. It also appears that though at the time of completion of the first year of contract, a sum of Rs. 32,88,125 was to be recovered by the Municipality from the contractor, the said amount was not recovered. Even at the end of the second year (as on 27.12.1996) a sum of Rs. 61,71,805/= was overdue and payable by M/s. Pravin Corporation to the Municipality. The said amount was not recovered by the Municipality and by not recovering the said amount, substantial loss was caused to the respondent Municipality.

12. In the impugned order, the circumstances in which the respondent Municipality had shown carelessness in the matter of recovery of amount from M/s. Pravin Corporation has been stated. It can also be seen that undue favour was done to M/s. Pravin Corporation by the Municipality by changing the terms of the contract and while dealing with M/s. Pravin Corporation, the Municipality had acted in violation of an order passed by the Director of the Municipalities. Thus, the reasons for arriving at a conclusion has been clearly stated in ground No.2 incorporated in the schedule. We have taken the above-referred ground only as an instance. Thus, it can not be said that there is non-application of mind while coming to the above-referred conclusion. If we look at the reply of the respondent Municipality on the above-referred subject, we do not find any reason to hold that the conclusion arrived at by the respondent authority, so far as above referred ground is concerned, is incorrect.

13. Similarly, the third ground with regard to filling up several vacancies without obtaining requisite permission from the Director of Municipalities is also found to be correct. The Municipality had flouted the directions with regard to economy measures suggested by the Finance Department of the State of Gujarat. In spite of the fact that there was surplus staff in the Municipality, approximately 190 persons were given appointments. In the above circumstances the respondent authority has come to the conclusion that the Municipality had abused its powers in the matter of recruitment of its employees and incurred huge administrative expenditure which had put the Municipality to great financial difficulties. Discussion with regard to the abovereferred ground, in our opinion, is just and proper. We do not think that anything more is required to be said by the respondent government while dealing

with the above-referred ground. As stated hereinabove, we have just illustrated a few grounds and we do not think it necessary to discuss each and every ground referred to in the impugned order.

14. We are of the view that the administrative authorities are not expected to give reasons in detail for arriving at their conclusions as judicial officers give the reasons in their judgments. It has been held in case of S.N Mukherjee v. Union of India by the Hon'ble Supreme Court (AIR 1990 SC 1984) that though the administrative authorities are required to record reason in their quasi-judicial orders, they are not supposed to be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on facts and circumstances of a particular case. As per law laid down by the Hon'ble Supreme Court what is necessary is that the reasons should be clear and explicit so as to indicate that the concerned authority had given due consideration to the points in controversy. If the conclusions arrived at by the administrative authorities are correctly reproduced and if the said conclusions are found correct upon perusal of the show-cause notice and reply given to the show-cause notice, we do not think that the Court should interfere with such conclusions arrived at by the administrative authorities.

15. It is also necessary that the reasons should be stated while taking a particular decision so that possibilities of bias and prejudice can be ruled out and facts with regard to application of mind can be made patent. In the instant case, 14 grounds stated in the show-cause notice and 14 conclusions arrived at in the impugned order dated 12.2.97 correctly show the position. Each and every ground appeared to be correct to the respondent government and, therefore, ultimately the respondent government had come to the conclusion that, as per provisions of Sec. 263(1) of the Act, the respondent Municipality should be superseded. We do not think that the impugned order suffers from the vice of non-application of mind and we do not agree with the submissions made by the learned advocates appearing for the Municipality and its Councillors that the order is not a speaking order and it suffers from the vice of non-application of mind.

16. We also note the fact that the Councillors are holding public offices and they are supposed to protect interest of the municipality. In the instant case, the municipality and the Councillors had acted in such a manner that the Municipality has been put to financial

difficulties. They have incurred huge expenditure in an illegal and irregular manner. They have simply ignored instructions with regard to not recruiting staff. In spite of the fact that certain employees were declared surplus in one department of the municipality, the municipality had recruited 190 persons in flagrant violation of the instructions given by the Director of Municipalities, the Collector, Mehsana and the State of Gujarat. Each appointment results into permanent financial burden on the municipality. As trustees of the municipality, the Councillors ought to have considered the said facts. Moreover, several financial irregularities have been committed by the Municipality. Purchase of goods without inviting tenders from public and without giving sufficient publicity by way of advertisements are also found to be most improper by the respondent government. We are also of the view that when purchases are to be made, unless there are exceptional circumstances, by public advertisement tenders should be invited so that the municipality can take advantage of competitive rates offered by the suppliers. In the instant case, without issuance of any public notice or without inviting tenders, huge purchases were made by the municipality. It also appears that expenses were incurred without undergoing requisite formalities. Normally, a bill, before it is sanctioned is routed through certain officers like Chief Officer of the municipality. The respondent government has come to the conclusion that without doing such formalities the President had sanctioned, the bills and payments were made in violation of settled practice and/or relevant rules and regulations. Contention of the Councillors that the decisions were taken by the President and not by the municipality is also not wholly true. Several decisions were taken by the municipality in its general meeting which were against the interest of the municipality.

17. So far as the submission with regard to non-supply of a copy of the letter addressed by Advocate Shri Padiwal is concerned, the learned Govt. Pleader has submitted that it was not necessary to give a copy of the said letter as contents of the said letter were not relied upon by the respondent Government while passing the impugned order. It has been submitted by Shri Desai that when late Shri Padiwal had addressed a letter to the respondent government pointing out several irregularities and illegalities committed by the respondent municipality, the government had thought it fit to look into it and ultimately show-cause notice dated 7.1.97 was issued to the respondent municipality. The said

show-cause notice had covered the grounds incorporated in letter of Shri Padiwal. Thus, by virtue of the said letter of Shri Padiwal, the respondent government had initiated the proceedings and as the said letter was not the basis for supersession of the municipality, it was not necessary to give a copy of the said letter to the municipality. We also find substance in the said submission.

18. Thus, we are of the view that the impugned order dated 12.2.97 whereby Kalol Municipality has been superseded is just and proper and it ought not to have been set aside by the learned Single Judge. We are satisfied with the fact that the respondent government had stated its conclusion after referring to each and every ground. Merely because the language used in the show-cause notice and the language used in the final operative order is the same or similar, it cannot be said that there is non-application of mind on the part of the authority passing the order. Looking to the facts of the case, we feel that the impugned order is a speaking order and it cannot be said that it suffers from the vice of non-application of mind.

19. In the result, the appeal is allowed with no order as to costs and the order passed by the learned Single Judge in Special Civil Application No. 1565 of 1997 is quashed and set aside. The impugned order dated 12.2.97 superseding Kalol Municipality shall operate forthwith.

19.1 Civil Application No. 11024/97 praying for stay of implementation of the order passed by the learned Single Judge in Special C.A No. 1565 of 1997 dated 25.7.1997 will not survive in view of the fact that the appeal is allowed and the said order has been quashed and set-aside. The C.A is therefore disposed of with no order as to costs.

(K. Sreedharan, C.J.)

(A.R. Dave, J.)